(9)

No. 91-1353

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

THOMAS F. CONROY,

Petitioner,

v.

WALTER S. ANISKOFF, JR., *et al.*,

Respondents.

On Writ of Certiorari to the Supreme Judicial Court of Maine

REPLY BRIEF FOR PETITIONER

Of Counsel
PETER A. ANDERSON
202 Exchange Street
Suite 200
Bangor, Maine 04401
(207) 947-0303

ROBERT H. KLONOFF
(Counsel of Record)
EDWARD K. BILICH
FATON A. BACAJ
JONES, DAY, REAVIS
& POGUE
1450 G Street, N.W.
Washington, D.C. 20005
(202) 879-3939

Counsel for Petitioner

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

No. 91-1353

THOMAS F. CONROY,

Petitioner,

v.

WALTER S. ANISKOFF, JR., *et al.*,

Respondents.

On Writ of Certiorari to the Supreme Judicial Court of Maine

REPLY BRIEF FOR PETITIONER

In his opening brief, petitioner demonstrated that Section 525 of the Soldiers' and Sailors' Civil Relief Act of 1940 (the "Relief Act"), as amended, 50 U.S.C. App. § 525, does not require military personnel to establish prejudice in order to toll the period for redemption of real property sold for nonpayment of taxes. As petitioner explained (Pet. Br. 9-15), Section 525, by its terms, contains no prejudice requirement, and other provisions of the statute -- some of which expressly condition relief on a showing of hardship -- confirm that Congress' failure to include such a requirement in Section 525 was deliberate. Petitioner also showed (Pet. Br. 15-24) that applying Section 525's plain language rationally serves Congress' statutory objectives, and that there is no legislative history indicating that Congress meant something other than what it said.

Respondents ignore virtually all of these arguments. They do not dispute that Section 525, by its terms, does not contain a prejudice requirement. They further do not dispute that, as other sections of the Relief Act demonstrate, Congress knew how to impose a prejudice requirement when it wanted to do so. In addition, respondents fail to marshal any legislative history to show that Congress did not mean what it said in Section 525. Finally, respondents do not challenge the legal proposition, relied upon by petitioner (Pet. Br. 16), that this Court may ignore the plain language of an unambiguous statute only in narrow and extraordinary circumstances. Instead, respondents advance three erroneous contentions.

First, respondents contend that the Relief Act is a wartime statute that has limited applicability to a "career" serviceman during peacetime (Resp. Br. 7-8). This argument ignores the fact that the Act was extended as a *peacetime* statute in 1948 without any change in the unambiguous language of Section 525 (*see* Pet. Br. 21; Brief of the United States as *Amicus Curiae* at 7, 26). Respondents seek support in Section 510 of the Relief Act, which refers to "emergent conditions" threatening the nation's peace (Resp. Br. 2, 7-8). But in quoting Section 510 in their brief, they inexplicably omit critical language, *i.e.*, that one purpose of the Relief Act is "to enable the United States the more successfully to fulfill the requirements of the national defense." 50 U.S.C. App. § 510. This purpose is clearly served by applying the plain language of Section 525. Furthermore, while respondents indicate (Resp. Br. 8) that Section 510 refers to a "temporary suspension of legal proceedings," this language simply underscores that the protections of the Relief Act apply only to the period of military service. *See* 50 U.S.C. App. § 511(2) (defining period of military service).

Second, citing *King v. St. Vincent's Hospital*, 112 S. Ct. 570, 574 (1991), respondents urge the Court to focus on the "context" of Section 525 by taking into account "policy considerations" (Resp. Br. 6, 7, 8, 12). But the Court in *King*

hardly intended that judges should ignore a statute's language. Indeed, the Court in *King* adhered to the plain language of the statute at issue even though it indicated that it might have reached a different result on policy grounds had it been a legislative body. *Id.* at 573. In referring to "context," the Court was simply noting that it could confirm one section's plain language by looking at other sections of the same act, *see King*, 112 S. Ct. at 574, the very analysis that petitioner undertook in his opening brief (Pet. Br. 12-15). *King* thus provides strong support for *petitioner's* contentions (*see* Pet. Br. 17-18), and adds nothing to respondents' effort to abandon rules of construction in favor of their own view of public policy.

Third, respondents suggest (Resp. Br. 12) that a plain reading of Section 525 could threaten "the integrity of the real estate system." Specifically, they express concern that "title to any real estate owned by a serviceman would remain unresolved even for good faith purchasers for value who have no prior notice that the property had been taken for taxes as a result of the serviceman's non-payment" (Resp. Br. 12). Of course, respondents' attempt to resort to equitable arguments is undermined by their own admission (Resp. Br. 5) that the properties at issue were conveyed by mere quitclaim deeds. In any event, respondents cite no evidence that Section 525 has in fact had any adverse effect on the real estate system. Significantly, no banking or real estate trade association -- or anyone, for that matter -- has filed an amicus brief echoing respondents' fears. Congress was evidently correct in believing that military personnel would not deliberately disregard their financial obligations (*see* Pet. Br. 20).[1]

---

[1]Respondents simply ignore petitioner's point (Pet. Br. 20) that, because of interest charges, a service member generally would have little financial incentive for deliberately withholding his real estate taxes. A service member, moreover, could seriously damage his credit rating by not paying real estate taxes.

At bottom, respondents are asking this Court to engage in the legislative function of balancing "[t]he interests of military personnel" against "the interests of society as a whole" (Resp. Br. 6). This is something that the Court cannot do: when a statute is clear, the Court must "put aside" its "appraisal of the wisdom or unwisdom of a particular course consciously selected by the Congress" and must apply the law as written. *TVA v. Hill*, 437 U.S. 153, 194 (1978). The concerns raised by respondents should be addressed to Congress, not the courts.

For the foregoing reasons and those stated in petitioner's opening brief, the decision of the Supreme Judicial Court of Maine should be reversed.

Respectfully submitted,

Of Counsel:
PETER A. ANDERSON
202 Exchange Street
Suite 200
Bangor, Maine 04401
(207) 947-0303

ROBERT H. KLONOFF
EDWARD K. BILICH
FATON A. BACAJ
JONES, DAY, REAVIS & POGUE
1450 G Street, N.W.
Washington, D.C. 20005
(202) 879-3939

Counsel for Petitioner

October, 1992